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Of Counsel for New Penn Financial, LLC
dba Shellpoint Mortgage Servicing and
The Bank of New York Mellon f/k/a The
Bank of New York as Trustee for the
Certificateholders Od The CWALT, Inc.,
Alternative Loan Trust 2006-OC1, Mortgage
Pass-Through Certificates, Series 2006-OC1

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

JAMES TOBIN and LORI TOBIN, husband and wife,

Plaintiffs,

v.

BANK OF AMERICA, N.A., a national association, NEW PENN FINANCIAL LLP dba SHELLPOINT MORTGAGE SERVICING, a foreign corporation, and THE BANK OF NEW YORK MELLON fka THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWALT, INC., ALTERNATIVE LOAN TRUST 2006-OC1, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-OC1,

Defendants.

Case No. 2:18-cv-01024-TSZ

**DEFENDANTS' ANSWER TO
PLAINTIFFS' COMPLAINT**

Defendants New Penn Financial, LLC dba Shellpoint Mortgage Servicing ("Shellpoint") and The Bank of New York Mellon f/k/a The Bank of New York as Trustee for the

Certificateholders Of The CWALT, Inc., Alternative Loan Trust 2006-OC1, Mortgage Pass-Through Certificates, Series 2006-OC1 (“BONY”) (collectively “Defendants”) hereby answer the Complaint of Plaintiffs James Tobin and Lori Tobin as follows:

Parties, Jurisdiction and Venue

1. Answering Paragraph 1 of the Complaint, Defendants respond that they lack information or belief sufficient to answer the allegations in this Paragraph and on that ground deny them.
2. Answering Paragraph 2 of the Complaint, the allegations are not directed at Defendants. To the extent a response is required, Defendants respond that they lack information or belief sufficient to answer the allegations in this Paragraph and on that ground deny them.
3. Answering Paragraph 3 of the Complaint, Defendants admit that Shellpoint is the current loan servicer for the loan at issue in Plaintiffs’ Complaint and that Shellpoint has offices in Greenville, South Carolina.
4. Answering Paragraph 4 of the Complaint, Defendants admit that The Bank of New York Mellon f/k/a The Bank of New York as Trustee for the Certificateholders Of The CWALT, Inc., Alternative Loan Trust 2006-OC1, Mortgage Pass-Through Certificates, Series 2006-OC1 is the current beneficiary under the deed of trust securing an interest in the subject Property. Defendants admit that it retained BANA in the past as the loan servicer for the loan at issue. Defendants admit that Shellpoint is the current loan servicer for the loan at issue in Plaintiffs’ Complaint. As to the rest of the allegations, Defendants lack information or belief sufficient to answer the allegations in this Paragraph and on that ground deny them.
5. Plaintiffs omitted paragraph 5 in their Complaint.
6. Answering Paragraph 6 of the Complaint, Defendants admit they conduct business within the state of Washington, but lack information or belief sufficient to answer the allegations in this Paragraph and on that ground deny them.

7. Answering Paragraph 7, Defendants admit that they have conducting business in the state of Washington. As to the rest of the allegations in this paragraph, Defendants deny them.

8. Answering Paragraph 8, Defendants state that this paragraph consists of legal conclusions to which no response is required. As to the rest of the allegations in this paragraph, Defendants respond that they lack information or belief sufficient to answer the allegations in this Paragraph and on that ground deny them.

9. Answering Paragraph 9, Defendants state that this paragraph consists of legal conclusions to which no response is required. As to the rest of the allegations in this paragraph, Defendants respond that they lack information or belief sufficient to answer the allegations in this Paragraph and on that ground deny them.

FACTS

10. Answering Paragraph 10, Defendants admit that the Tobins obtained a loan in the amount of \$300,000 from Decision One Mortgage Company in October 2005. As to the rest of the allegations in this paragraph, Defendants respond that they lack information or belief sufficient to answer the allegations in this Paragraph and on that ground deny them.

11. Answering Paragraph 11, Defendants respond that the document attached as Exhibit A to the Complaint speaks for itself and the remaining allegations in paragraph 11 are denied.

12. Answering Paragraph 12, Defendants respond that the document attached as Exhibit B to the Complaint speaks for itself. As to the rest of the allegations in this paragraph, Defendants respond that they lack information or belief sufficient to answer the allegations in this Paragraph and on that ground deny them.

13. Answering Paragraph 13, Defendants admit that Plaintiffs filed a quiet title action identified as Case No. 16-2-201410-4 in King County Superior Court and dismissed the action. As to the remaining allegations in the paragraph, Defendants deny them.

14. Answering Paragraph 14, Defendants respond that the document attached as Exhibit E to the Complaint speaks for itself.

15. Answering Paragraph 15, Defendants respond that the documents attached as Exhibit F to the Complaint speak for themselves. As to the rest of the allegations, Defendants deny them.

CAUSE OF ACTION

16. There are no factual allegations asserted in paragraph 16, but Defendants re-allege their responses to paragraphs 1-15 as if alleged herein.

COUNT ONE: QUIET TITLE

17. Answering Paragraph 17, RCW 4.16.005, 4.16.040 speak for themselves. As to the rest of the allegations, Defendants deny them.

18. Answering Paragraph 18, Defendants deny the allegations.

19. Answering Paragraph 19 of the Complaint, Defendants respond that they lack information or belief sufficient to answer the allegations in this Paragraph and on that ground deny them.

20. Answering Paragraph 20 of the Complaint, Defendants deny the allegations and deny that Plaintiffs are entitled to quiet title.

21. Answering Paragraph 21 of the Complaint, Defendants deny the allegations.

COUNT TWO: VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT

22. Answering Paragraph 22 of the Complaint, Defendants deny the allegations.

23. Answering Paragraph 23 of the Complaint, Defendants deny the allegations.

24. Answering Paragraph 24 of the Complaint, Defendants deny the allegations.

COUNT THREE: VIOLATION OF THE CONSUMER PROTECTION ACT; ALL DEFENDANTS

25. Answering Paragraph 25 of the Complaint, Defendants deny the allegations.

26. Answering Paragraph 26 of the Complaint, Defendants state that this paragraph contains legal conclusions that do not require a response. To the extent this paragraph requires a response, Defendants are without sufficient knowledge of information to admit or deny the allegations and on that basis deny each and every allegation of this paragraph.

27. Answering Paragraph 27 of the Complaint, Defendants deny the allegations.

28. Answering Paragraph 28 of the Complaint, Defendants deny the allegations.

29. Answering Paragraph 29 of the Complaint, Defendants deny the allegations.

30. Answering Paragraph 30 of the Complaint, Defendants deny the allegations.

PRAYER FOR RELIEF & DAMAGES

31. Answering the prayer for relief, Defendant deny the relief requested by Plaintiffs.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. Plaintiffs fail to state a claim upon which relief can be granted against Defendants.

SECOND AFFIRMATIVE DEFENSE

2. Plaintiffs are barred from obtaining the relief sought in the Complaint by the doctrines of estoppel, waiver, unclean hands, and laches.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiffs' claims are barred in whole or in part because Plaintiffs have failed to mitigate their alleged damages, if any.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiffs have suffered no actual damages and any damages claimed by Plaintiffs in the Complaint are impermissibly speculative and cannot be recovered from Defendants.

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiffs' claims are barred in whole or in part because Plaintiffs consented to, ratified, or acquiesced in all of the alleged acts or omissions they complain of.

SIXTH AFFIRMATIVE DEFENSE

6. Defendants' conduct was privileged and/or justified.

SEVENTH AFFIRMATIVE DEFENSE

7. Plaintiffs have waived any and all claims, rights and demands made in the Complaint.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiffs' claims may be barred because the acts or omissions of which Plaintiffs complain have been approved and/or mandated, implicitly or expressly, by applicable statutes and regulations.

NINTH AFFIRMATIVE DEFENSE

9. Plaintiffs' claims may be barred because Defendants at all times acted in good faith with a reasonable belief in the lawfulness of their conduct.

TENTH AFFIRMATIVE DEFENSE

10. Neither the Complaint, nor any cause of action thereof, state facts sufficient to support a claim or award of attorney's fees, under any legal or equitable theory.

ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiffs' claims may be barred in whole or in part by the applicable statutes of limitations.

TWELFTH AFFIRMATIVE DEFENSE

12. Any harm alleged in the Complaint can be attributed to several causes, and the damages for this harm, if any, should be apportioned among the various causes according to the contribution of each cause to the harm sustained.

THIRTEENTH AFFIRMATIVE DEFENSE

13. If Plaintiffs suffered or sustained any loss, injury, damage or detriment, it was directly and proximately caused and contributed to by the breach, conduct, acts, omissions,

activities, carelessness, recklessness, negligence, and/or intentional misconduct of others, and not by Defendants.

FOURTEENTH AFFIRMATIVE DEFENSE

14. If Plaintiffs suffered or sustained any loss, injury, damage or detriment, it was directly and proximately caused and contributed to by the intervening acts of others, and not by Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

15. If Plaintiffs prevail against Defendants, Defendants' liability is several and limited to their own actionable segment of fault, if any.

SIXTEENTH AFFIRMATIVE DEFENSE

16. Plaintiffs' recovery, if any, is subject to a set-off.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. The injuries or damages of which Plaintiffs complain may have been caused in whole or in part by non-parties whom Plaintiffs have failed to join in this action.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. If Plaintiffs suffered or sustained any loss, injury, damage or detriment, the same was directly and proximately caused and contributed to by the breach, conduct, acts, omissions, and/or activities of Plaintiffs, and not by Defendants.

NINTEENTH AFFIRMATIVE DEFENSE

19. Defendants' acts were authorized by law.

TWENTIETH AFFIRMATIVE DEFENSE

20. Defendants have done no more than insist upon their legal rights in good faith and in a permissible way. Plaintiffs are not entitled to relief as Defendants' conduct in protecting their own exiting legal, contractual and/or economic interest is privileged.

TWENTY-FIRST AFFIRMATIVE DEFENSE

21. The relief sought by Plaintiffs would constitute unjust enrichment.

TWENTY-SECOND AFFIRMATIVE DEFENSE

22. Defendants specifically deny that they acted with any willfulness, oppression, fraud or malice towards Plaintiffs.

TWENTY-THIRD AFFIRMATIVE DEFENSE

23. Plaintiffs' claims are barred because they have not tendered the full amount of the undisputed loan amount due and owing.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

24. Plaintiffs have no standing as they have not suffered injury in fact or lost money or property.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

25. Defendants waived or abandoned any possible acceleration of the loan by issuing a loan modification offer to Plaintiffs.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

26. Defendants tolled any potential acceleration by recording the Notice of Trustee's Sale.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

27. Defendants specifically give notice that they intend to rely upon such other defenses as may become available by law, or pursuant to statute, or during any further discovery proceedings of this case, and hereby reserve the right to amend its Answer and assert such defenses.

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiffs take nothing by reason of the Complaint.
2. For their costs of suit herein;
3. For attorney's fees according to proof and to the extent available by law or contract; and
4. For such other and further relief as this Court may deem just and proper.

DATED: November 1, 2018.

/s/ Donald G. Grant

DONALD G. GRANT, WSBA#15480
Of Counsel for Defendant The Bank of New York Mellon,
f/k/a The Bank of New York, As Trustee For The
Certificateholders of the CWABS, Inc., Asset-Backed
Certificates, Series 2006-17 and New Penn Financial,
LLC, dba Shellpoint Mortgage Servicing

DEFENDANTS' ANSWER TO COMPLAINT - 9

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CERTIFICATE OF SERVICE

I certify that I served the foregoing pleading on the following on November 1, 2018:

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Of Counsel for Defendant Bank of America, N.A.

x by electronic means through the Court's Case Management/Electronic Case File (CME/ECF) system on the date set forth below; and

____ by directly e-mailing a true copy thereof to his or her e-mail address listed above; and

____ by mailing a true copy of the pleading to the plaintiff at his address listed above.

DONALD G. GRANT, P.S.

/s/ Donald G. Grant
DONALD G. GRANT, WSBA#15480

DEFENDANTS' ANSWER TO COMPLAINT - 10

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DEFENDANTS' ANSWER TO COMPLAINT - 11

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